IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9669 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATHOD BHUPATSINH KHENGARJI - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HB JADEJA for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
MR LR PUJARI ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/03/2007

ORAL JUDGMENT

1. Shri H.B. Jadeja, learned counsel for the petitioner; Shri Hukum Singh, learned AGP for the respondents.

2. The short facts necessary for disposal of the present writ application are that the Additional Mamlatdar [Ceiling] & ALT, Dhangadhra, Surendranagar, passed an order on 24.10.90 in Ceilng Case No. 321/76-77 that deceased Khengarji Raisinhji was possessed of about 4 acres and 9 gunthas surplus land. He accordingly directed that the land shall vest in favour of the State. Being aggrieved by the said order, the present petitioners no. 1,4 and 5 challenged the said judgment by filing an appeal before the Deputy Collector, which came to be dismissed on the ground of limitation on 23.7.92. The petitioners no. 1,4 and 5 challenged the said order before the Revenue Tribunal in Revision Application No. TEN.B.A. No. 707/92. The revision application was allowed, the matter was remanded to the Mamlatdar & ALT to give an option/choice to the applicants for surrendering surplus land in favour of the State Government with a specific direction that the Mamlatdar would take possession of survey no. 269 admeasuring 3 acres and 37 gunthas instead of 4 acres and 9 gunthas out of survey no. 268. It is to be noted that the applicants [petitioners no. 1,4 and 5] had specifically pleaded in their written statement that instead of part of survey no. 268,

they be allowed to surrender survey no. 269 admeasuring 3 acres and 37 gunthas.

3. Though question of dismissal of appeal on the ground of limitation was taken up for consideration, but in view of the admissions made by the applicants before the Tribunal, the authority did not decide the question of limitation.

4. The petitioners now submit that while disposing of the revision application, the Tribunal was obliged and required to decide the matter on merits, the Tribunal should have first decided that whether the petitioners were possessing excess land or not.

5. Shri Hukum Singh, learned AGP for the respondents on the other hand submits that the petitioners are trying to play fraud with the authority and are trying to blow hot and cold at the same time. He submits that the petitioners had given in writing that they were ready and willing to surrender survey no. 269 instead of part of survey no. 268 and if the Tribunal relied upon the written submissions of the petitioners, then, at this stage, the petitioners cannot be allowed to take advantage

of any other fact.

6. Submission of Shri Hukum Singh further is that if the petitioners are not satisfied with this order, then, the whole order may be set aside and the matter may be remanded back to the Tribunal with directions that he should first decide that whether the appellate authority was justified in dismissing the matter on question of limitation. If the Tribunal comes to a conclusion that the appeal was rightly dismissed on the question of limitation, then, that would be the end of the matter, but if the Tribunal comes to a conclusion that that the Deputy Collector was unjustified in dismissing the matter on question of limitation, then, after setting aside the order passed by the Deputy Collector, the Tribunal should remand the matter back to the Deputy Collector for deciding the appeal on merits.

7. Shri Jadeja, learned counsel for the petitioners submits that he would have no objection if the order passed by the Tribunal is set aside, but the matter now should be remanded to the

Mamlatdar for redeciding the matter.

8. After hearing the parties and also after taking into consideration the conduct of the petitioners, I am of the opinion that the petitioners were at all not entitled to a concession which was made in their favour by the Tribunal. The Tribunal, even otherwise, travelled beyond its jurisdiction in passing the order in favour of the petitioners on the merits when the merits of the matter could not be decided by the Tribunal as limitation issue before the Tribunal was that whether the appellate authority was justified in dismissing the appeal on the ground of limitation.

9. The order dated 4.2.93 passed by the Tribunal is set aside in toto. The matter is remanded back to the Tribunal for hearing it afresh. The Tribunal shall first decide that whether the appellate authority was justified in dismissing the matter on the ground of limitation. If it comes to a conclusion that the appellate authority was justified in dismissing the matter on ground of limitation, then, that would be the

end of the matter, but if the Tribunal comes to a conclusion that the appellate authority should not have dismissed the appeal on the ground of limitation, then, the Tribunal, after recording its satisfaction, shall set aside the order passed by the appellate authority and remand the matter to the appellate authority for a decision afresh on the merits of the matter.

10. The parties present in the court shall appear before the Tribunal on 23rd April, 2007 with a copy of this order. The Tribunal shall decide the matter positively within four months from the date of appearance of the parties. Rule is made absolute. No costs.

[R.S. GARG, J.]

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